

April 24, 2019

The Honorable Elijah E. Cummings
Chairman, Committee on Oversight and Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Re: *Deposition of John Gore*

Dear Chairman Cummings:

I write in response to your request that John Gore appear for a deposition before your Committee on April 25, 2019. Your Subpoena seeks Mr. Gore's testimony regarding the Department of Commerce's decision to reinstate the question "Is this person a citizen of the United States" on the 2020 Census questionnaire.

As you know, Mr. Gore has provided his full cooperation in this matter. Mr. Gore has submitted to live questioning regarding the reinstatement of the citizenship question in three different forums, for a total of more than 12 hours of testimony. Mr. Gore previously was deposed in the civil litigation challenging the Department of Commerce's decision, which was argued before the Supreme Court just yesterday. Mr. Gore provided testimony at a public hearing before your Committee on May 18, 2018. Mr. Gore also gave a separate transcribed interview with Committee counsel on March 7, 2019, during which he answered more than 500 questions. Mr. Gore has consistently offered truthful and complete testimony to the best of his ability. In fact, Mr. Gore has declined to answer only as instructed by Department of Justice lawyers in order to preserve the Department's claims of privilege and to prevent the disclosure of internal executive branch communications that may be protected by a relevant privilege.

I appreciate you sending the proposed topics and questions for Mr. Gore's deposition to me last week. Those requests cover 18 wide-ranging topics and pertain solely to Mr. Gore's service as a Department of Justice official. Moreover, those topics are dominated by questions regarding conversations my client had in his official capacity with the Attorney General and other senior executive branch officials. There can be no doubt that these questions are designed to elicit material protected by important executive branch privileges. *See United States v. Nixon*, 418 U.S. 683, 708 (1974) (recognizing that questions seeking an unfettered window into "candid, objective, and even blunt" executive decision making are presumptively protected.)

Neither myself nor Mr. Gore is in a position to make judgements regarding those executive branch privileges. Unfortunately, we understand that the Committee and the Department of Justice remain at an impasse on the question of whether agency counsel can be present at the deposition. We understand that the Department seeks the presence of agency counsel to ensure

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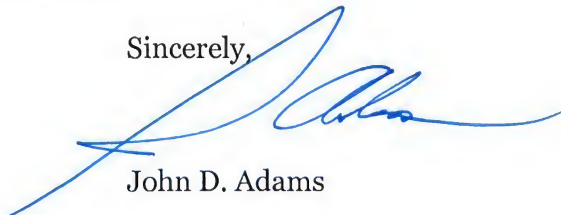
that all relevant executive branch privileges—which the Department has not authorized Mr. Gore to waive—are protected. Indeed, we understand that Attorney General Barr has directed my client not to appear at the deposition, absent the presence of agency counsel.

That leaves my client, a Department of Justice Official, in an intractable bind. He is happy to continue to cooperate with appropriate requests from the Committee, as he has on multiple occasions in this matter. But he is not willing to ignore the Attorney General of the United States. Nor will he violate his legal or ethical obligations as an attorney for the United States. I submit to you that your issue here is not with my client, but rather with the Department of Justice, specifically on the question of whether agency counsel will be present for the deposition. Until that issue is resolved, my client cannot attend the deposition.

I also note that not only does the subpoena implicate important separation of powers issues between the executive and legislative branches, but that the judicial branch also is considering the legality of the Department of Commerce's decision at this very moment. The United States Supreme Court heard argument yesterday in the very case in which Mr. Gore was already deposed. And the House of Representatives was afforded the opportunity to present oral argument before the Court. The Court will issue a decision before the end of its term in June.

Given the impasse between this Committee and the Department of Justice, Mr. Gore's extensive previous testimony, the pending resolution of this issue by the United States Supreme Court, and the sensitive matters of executive privilege implicated here, Mr. Gore is unable to appear for the deposition requested by the Committee. Moreover, it is apparent that, in the current circumstances, the most reasonable and appropriate accommodation is for the Committee to continue discussions with the Department of Justice, while also waiting a very short period to assess the Supreme Court's forthcoming decision in this matter. Doing so will quite possibly allow resolution of this situation without unnecessarily expending valuable public resources or forcing unnecessary questions regarding separation of powers. And that resolution will be most fair to Mr. Gore, who has been entirely cooperative thus far.

Sincerely,



John D. Adams

cc: The Honorable Jim Jordan
Ranking Member